Introduction

Human Rights and the Environment

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Introduction

Human rights are now widely recognized as capturing the most weighty ethical concerns of our time; environmental threats are among the most serious challenges of our time; but the original formulations of human rights made little or no reference to environmental concerns. Now that environmental threats caused by the actions of human beings are understood to issue in serious harms to human health and well-being, questions regarding the connection between human rights and the environment abound. Are harms inflicted by the activities of some humans on others through the medium of the natural environment violations of rights? Do humans have a right to an adequate environment? If so, is this already covered by existing rights – like a right to life or to health, for instance – or do we need to recognize more specific *environmental* human rights? Is the language of human rights, and are the institutions for human rights, necessarily the most appropriate or even helpful means for pursuing goals of environmental protection? What can we learn from steps already taken in law and politics to link the aims of human rights and environmental protection? Interest in these questions has developed at an accelerating pace over the past two decades in a variety of contexts, and has been manifest in different sections of scholarly literature. The aim of the four volumes presented here is to provide a comprehensive overview of how environmental concerns have increasingly come to be aligned with concerns of human rights in recent years, while also presenting novel challenges and critical questions about the relationship between the two sets of concern.

The volumes are divided into six thematic parts. The first two survey such questions as whether human rights are in principle well suited to achieve environmental protections, whether in practice they can deliver them, whether it would be helpful to have specific environmental human rights, or whether existing human rights can achieve the ends sought. Part 1 takes in the early and formative literature of philosophy and international law, while Part 2 includes works that focus on the constitutional dimension. Part 3 surveys the experience to date of using human rights instruments for environmental ends. It includes comparisons of these approaches with alternatives, and takes account of critical questions about what we can reasonably expect to be achieved by these approaches. Part 4 focuses on specific environmental issues in relation to human rights concerns, while Part 5 is dedicated

to the extensive recent debates about the relationship between human rights and the specific environmental concern of climate change. Part 6 consists of contributions to thinking about future prospects for human rights in relation to environmental concerns, including questions about the rights of future generations.

The purpose of the present Introduction is to provide an orientation to the works by way of some contextual background and a succinct overview of how debates on their topics have developed in recent decades and into the present.

Background to the questions

Human rights have explicitly been a focus of international ethical concern since the Universal Declaration of Human Rights of 1948.[1] The values then articulated, however, are generally understood to have much deeper roots in the history of humanity's social and political relationships: ideas of 'rights of man' and 'natural rights' go back centuries; the essential ethical idea at their heart – that of the inherent equal dignity of all human beings – has been articulated by philosophers since antiquity; and we may suppose that human beings acknowledged something like it even before philosophers committed thoughts to paper. We are also aware, though, that such values are sometimes honoured more in the breach than the observance – and, at times, even egregiously so. The reason why human rights were expressly articulated – in an internationally agreed declaration – after the Second World War was to take a stand, on behalf of an international community of humanity, against the atrocities that some humans had proven capable of committing against others. To advocate human rights, then, is to take a stand on a set of basic ethical principles – what Henry Shue (1980) memorably referred to as the 'morality of the depths' – against the various predations humans are also capable of.

Protection of the environment would seem in some ways to be a quite different kind of concern. The most immediate harm against which protection is sought is done not to any human beings, at least directly; and often the harms done may be the unexpected by-product of ordinary activities undertaken in good faith and with no malicious intent, or they may result from an accumulation of otherwise quite harmless activities when undertaken by too many people at the same time. Nevertheless, since human beings can suffer serious harms from environmental consequences of other humans' deliberate actions, even when those actions may be innocent in themselves, it seems reasonable to ask if there are not quite

[1] For an analysis of the document and its drafting, see Morsink (1999).

serious duties of care and compensation with regard to harms inflicted via the medium of the natural environment just as there are for harms mediated by other means.

One kind of question, then, is how far the writ of human rights should run against practices that are not intended to, but may incidentally, do some harm to other human beings. There is considerable room for debate about this inherently disputable question. Some scholars and practitioners take a narrower and more restricted view of the scope of human rights than others do. Particularly those concerned that too extensive an application of the idea dilutes its force advocate strict 'quality control' on any proposed new rights, like those related to the environment (Alston 1984). The idea of human rights as powerful norms to be heeded by all branches of government, in all places, has risen to ascendancy because it keys into the idea that some kinds of action are just so clearly wrong that the whole of humanity has reason to unite in resisting and even combatting them – by all legal means as necessary, and even through forceful intervention *in extremis*. It might be argued that environmental harms, by contrast, are more like mistakes rather than egregious injustices, and should be corrected by improved policy-making rather than by enforcing peremptory duties.

Certainly, even those sympathetic to expanding traditional lists of human rights would agree that there have to be certain tests of 'genuineness' regarding claims such as to universality, moral importance and practicability of any posited new rights. Much debate in the literature has focused on how to interpret those criteria, however. While some (e.g. Cranston, 1967) suggest that only human rights belonging to a 'first generation' of fundamental civil and political rights are genuinely human rights, others emphasise the indivisibility of the concerns that include also the more substantive social and economic rights – sometimes referred to as 'second generation' rights. The idea that humans may have *environmental* rights is seen by some to mark a new kind, a third generation. To be sure, it is arguable, as we shall see, that environmental rights include elements of the other two generations as well, but the novel challenges posed are at the heart of the debates that we encounter in the articles gathered here. Concerning the applicability of human rights standards or instruments to matters environmental a range of views is possible. At one extreme, human rights are thought of as exclusively concerned with fundamental human goods like dignity and autonomy; the condition of the physical environment is a practical matter with no real moral dimension; and any 'obligations' humans might have in its regard are prudential rather than ethical; therefore there is no significant connection between human rights and the environment. If an environmental advocate is murdered by security forces, for instance, then there is an evident human rights concern, but its connection with matters environmental is merely contingent. It is merely contingent, that is, in the sense that the human rights affront is just the same as if the protest had been about any other cause: the

wrong of the state-sanctioned murder is a distinct wrong from any that might be alleged with regard to the environment. Such an extreme view of disconnect, however, is regarded by others as hardly a plausible one in today's world: if an environmental protest is met with severe repression it is in all probability because powerful vested interests are bound up with the activities that are causing the environmental problem as a by-product.

The first linkages of human rights and the environment

The first part charts the early contributions and debates that shaped the emergence of practice and scholarship in the field. Since one of the aims of this collection is to reveal the range of thinking on its central question, and to give a sense of its fluidity and openness to continued developments and changes to it in the years to come, it is fitting to open the collection with a paper that is not about human rights at all but about the possible rights of *nonhuman* beings. In his seminal broaching of the question 'Should Trees Have Standing?' **Christopher Stone** presents an argument for considering the environment itself, and the nonhuman elements of it, to be recognized as having rights to protection from human transgressions. Stone points out that, over the course of history, the sphere of potential rightholders has gradually expanded. Historically, rights of privileged subsections of humanity were enforced long before humans more widely came to win political or legal recognition as rightholders. That status is in fact still far from secure for many women, men and children in our world today. So while the primary concern in these volumes is to investigate the new rights that humans may recognize as holding against one another with respect to their treatment of the environment, this developmental perspective is also worth keeping in mind.

The first linkage of environmental and human rights concerns at the level of international discussions was marked by the Conference on the Human Environment, held at Stockholm in 1972. This historically significant event in the field of our inquiry – including the political negotiations involved in its drafting – is given a full analysis in the contemporary discussion of it by **Louis B. Sohn** that is reproduced here.[2] He suggests that the Stockholm principles may be seen as articulating 'common convictions' that, together with existing human rights and development commitments, collectively create a new atmosphere for international co-operation. The conference issued a landmark declaration the first of whose 26 principles for a new, environmental, era states: 'Man has the fundamental right to freedom,

[2] The declaration itself is readily accessible online: http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503

equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being…'.[3]

Progress on putting these principles into practice was made gradually rather than spectacularly, but in international statements and regional agreements they became increasingly diffused, as, for instance, with the 1981 African Charter of Human and Peoples' Rights and the 1989 Additional Protocol to the American Convention on Human Rights. In such cases, environmental rights are linked particularly to the right of development of a people. The link between human rights and environmental protection was given a further impetus with the Brundtland Report of 1987, which presented the basic goals of environmentalism as an extension of the existing human rights discourse, and proposed recognition that 'All human beings have the fundamental right to an environment adequate for their health and well-being.' (WCED 1987: 348)

Following from these various developments, the United Nations created the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to undertake a study of human rights and the environment. The Final Report of the Sub-Commission in 1994 (the 'Ksentini Report') offers a conception of human rights and the environment that captures the spirit of Principle 1 of the 1972 Stockholm declaration. The right to a healthy and decent environment, the report finds, is part of existing international law and is capable of immediate implementation by existing human rights bodies. The Sub-Commission went on to propose a declaration of 'Principles on Human Rights and the Environment' that gave sharper focus to environmental rights than generally found hitherto in international law. An extended and contextualised commentary on the report, by **Neil A.F. Popović**, is included here. The *Draft Declaration of Principles on Human Rights and the Environment*, he suggests, might serve 'as a vehicle for development of a formal, binding international legal instrument that protects environmental human rights.' (Popović 1996: 497)

However, the human rights perspective on environmental protection has not been unwaveringly maintained. Twenty years after the Stockholm Declaration, the 1992 Rio Conference on Environment and Development, for instance, avoided the terminology of rights in its declaration that 'Human beings are at the centre of concerns for sustainable development.' This could be taken as indicative of continuing uncertainty about the role of human rights law in the development of international environmental law. Nevertheless, the Rio Declaration does make one significant contribution to the development of environmental

[3] It continues: and he bears a solemn responsibility to protect and improve the environment for present and future generations.' And the second adds: 'The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.'

rights. Noting that environmental issues 'are best handled with the participation of all concerned citizens', its Principle 10 provides, in mandatory language, for significant procedural and participatory rights with regard to the environment:

> 'At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.'

Thus as the article by **Joseph L. Sax** shows, Rio did bring into focus an important link between certain environmental claims and baseline democratic values.

The development of procedural environmental rights was given a highly significant impetus with the Aarhus Convention, which, developed under the auspices of the UN Economic Commission for Europe (ECE), was signed, in June 1998, by 35 countries from this region, which covers the whole of Europe as well as parts of Central Asia, US, Canada, and Israel, although the North American countries opted out of the process. This agreement represents probably the most important step yet taken towards environmental rights protection: it establishes rights – to information, to participation in decision making, and to access to justice in environmental matters – which it expressly affirms are aimed at securing the right to a healthy environment. Although the Convention is only binding with regard to these procedural rights, it does expressly recognize in its Preamble, as the reason for these rights, 'that every person has a right to live in an environment adequate to his or her health and well-being.'

So, while it would be premature to assert that international law definitely recognizes a human right to an adequate environment, there have been sufficiently significant moves in this direction to support a *prima facie* case for asserting that an environmental human right is emerging in international law.

The questions about environmental human rights are nevertheless still far from settled. In the seminal analysis included here by **Diana Shelton** (1991), of the various conceptual and normative issues, it is emphasized that while human rights and environmental protection represent overlapping social values with a core of common goals, the two topics remain distinct. Environmental protection cannot be wholly incorporated into the human rights agenda without deforming the concept of human rights and distorting its program, she cautions. Also, many human rights are not directly affected by environmental considerations. She nonetheless does believe that both objectives might ultimately be furthered in conjunction

with each other: 'A clearly and narrowly defined international human right to a safe and healthy environment, currently emerging in international law, can contribute to this goal.' (106) **James W. Nickel** devotes further philosophical attention to these questions about when and how environmental concerns are appropriately framed in human rights terms, and, like Shelton, he tries to steer a course between competing alternative constructions. He argues that a definition of a human right to a safe environment should be neither too expansive nor too narrow: 'Enthusiasts are willing to use rights language in virtually all areas of environmentalism, including biotic rights, rights of species, and animal rights. By contrast, deep ecologists and non-anthropocentrists often hold that discussion in the environmental area should totally avoid the language of rights and the legalisms that allegedly accompany it.' Nickel argues that while it is better to phrase most environmental desiderata in terms of environmental *goods,* of *respect* for and *responsibilities* towards nature, and of *obligations* to future generations, it can nevertheless be helpful to invoke rights to deal with some of the most serious human consequences of environmental degradation. In particular, he believes, 'the right to a safe environment can play a useful and justifiable role in protecting human interests in a safe environment and in providing a link between the environmental and human rights movements.'

Consolidating the linkage constitutionally

The next group of papers moves the discussion from the horizon of international law to examine the constitutional connection between human rights and the environment. It is interesting to note, in fact, that practice seems to have run ahead of theory in this field. Certainly, if constitutional matters may be regarded as much for discussion from the standpoint of politics as from that of law – since they could in fact be said to underpin a bridge between them – then it is noteworthy how little an impression on scholars of politics had been made by concrete developments in the field. I recall my own first foray into the field. During 1996 my thinking about issues in environmental political theory lighted upon the question: 'What about a constitutional approach to environmental protection?' and from there to the related question 'What about constitutional environmental rights?' These were questions that did not seem to have been asked within my own disciplinary area, but, happily, I was referred to a colleague in the Law School at Edinburgh who happens to be an expert in environmental rights. Professor Alan Boyle introduced me to his own work and that of others, whereupon I quickly discovered that some seventy actual constitutions in the world had already given a practical response to my questions in their constitutional texts!

At that time I found a very helpful guide to be that of **Ernst Brandl and Hartwin Bungert**. Their detailed comparison of two different constitutional contexts remains, I believe, a good practical grounding for framing further comparative studies and so it is included here. Comparative studies are particularly salient in view of how the rights worldwide tend to cluster in regional types. **My own paper reproduced in Part 2** provided a structured summary of the questions that were to be given more expanded treatment in my subsequent book *Constitutional Environmental Rights* (2005): after clarifying the scope of a potentially feasible environmental right I assess the case for it in the light of four critical questions: whether environment protection can be considered a genuinely fundamental right; whether a new right is necessary for achieving that end; whether the right is practicable; and whether pursuing environmental ends by means of rights is democratically legitimate. While presenting arguments for an affirmative answer on each score, I also show that the strength of the case ultimately depends on a number of contextual issues – which, as we in due course see, can be addressed in a variety of ways.

Other questions to keep in mind are presented by the next set of five papers that each take a different critical perspective on the constitutional connection. **J.J Bruckerhoff** revisits the question broached by Stone to ask if we could not be less anthropocentric in our approach to environmental rights. While under no illusions about the enforceability even of human-centred environmental rights, and aware that the difficulties for non-anthropocentric rights are considerable, he nevertheless believes it is possible to carve out a role for constitutional rights in enforcing state duties with respect to the protection of biodiversity. He seeks to show that standards for evaluating environmental harms that affect humans' rights can exhibit greater or lesser 'anthropocentricity', and he draws some encouragement from court decisions to date in thinking that these might gradually be shifted in the 'lesser' direction.

A different perspective on anthropocentrism – and one that preceded environmental concerns by millennia (see e.g. Hayward, 1997b) – involves the contrast not between humans and other fauna but with a greater being of the kind that religions invoke as a deity. This serves to remind us that thought about humans being just one creature among others in a world far greater than us can be traced back in rich cultural traditions and religions. The contribution of **Jason Morgan-Foster** widens the discussion by showing how the concept of environmental rights can be supported and given distinctive direction by religiously-guided law as inspired by Islam. He finds, indeed, that a right and duty towards environmental protection have existed in Islam since the time of the Prophet Mohammed. In Islam, however, it is the emphasis on duty, and a substantive normative logic that can prioritise group rights over individual rights. This perspective offers insights and paths that are less clearly seen from the more individualistic Western perspective of 'fundamental rights'

confined to the negative individual 'first generation' rights, and it contributes to the conceptualization of environmental rights as a third generation of solidarity rights.

Problematization of the segregation of different generations of rights in relation to environmental concerns is a theme, too, of the first paper included here by **Alan Boyle**. 'Environmental rights do not fit neatly into any single category or "generation" of human rights. They can be viewed from at least three perspectives, straddling all the various categories or generations of human rights.' He combines this thought with that about anthropocentrism, to review the question whether we should continue to think within the existing framework of human rights law, in which the protection of humans is the central focus, or whether the time may have come to talk directly about a right to have the environment itself protected. He asks if we should transcend the anthropocentric in favor of the eco-centric. His nuanced discussion shows that it is not simply a question of the substantive vision to pursue but involves more complex considerations of how to develop and integrate the various institutions of different branches of law.

Where Boyle is concerned with questions of legal practicality, the concern of **Kerri Woods** is with the political effectiveness of inherited constructions of human rights. She observes, quite fairly, that most of those, like myself, who have advocated environmental human rights have done so while bracketing discussion of the philosophical problems underlying universal human rights and the various normative strains within the consensus on human rights. She shows that this could mean we are overlooking problems regarding the benefits to be gained by presenting claims for environmental justice in the language of human rights. Her argument is salutary in reminding us that it is not only philosophical or legal views that ultimately determine the practical value of environmental rights but also what is made of them by people engaged in political activity. There is politics, she reminds us, in the interpretation of the very idea of human rights. A related line of critical questioning is pressed by **Roda Mushkat** who is particularly concerned that the Western agenda that has dominated the literature to date needs to be expanded by reference to other global perspectives and challenged to include them.

Heeding this point, the next set of papers has been selected with the purpose of looking more widely around the world at developments in the field in recent years. In an extensive survey carried out for his book, *The Environmental Rights Revolution* (2012), David Boyd has shown that more than 100 nations have incorporated a constitutional right to a healthy environment has into their legislation and that it is being judicially enforced in Europe, Latin America, Asia, and Africa. The article included here by **James R. May and Erin Daly** analyses the factors that can influence the vindication of constitutionally enshrined

environmental rights. Although relatively few judicial decisions have so far implemented constitutional environmental rights, they write eloquently of a positive trend:

> 'Those courts that have embraced these provisions have transformed a notion writ large—environmental human rights—into a multitude of national narratives writ small, from the last stands of ancient forests in the Philippines to the last cold-climate forests in Patagonia, from the Ganges River in India to the Archeoos River in Greece, from celebrated woodlands of Hungary to water supplies in Africa. In many cases constitutionally enshrined environmental rights provided the last clear chance at vindicating a human right to an adequate environment.'

Constitutionalizing environmental protection should certainly not be regarded as a panacea, however, and there are reasons for caution about the desirability as much as the practicability of removing this matter from the vicissitudes of ordinary political decision making. Even critics concede it some value, though, and there seems good reason to think it can serve a constructive role in ratcheting up the standards of environmental protection that nation-states severally and in association observe. In doing so, it also helps maintain some political control over those forces of unbridled markets that tend to drive a "race to the bottom" in environmental and other matters of common social good.

Looking at the matter in a European context, **Ole W. Pedersen** argues that developments point toward an increased recognition of procedural and substantive environmental rights. A robust step is that a set of procedural environmental rights – encompassing a right of access to information, a right to participation, and a right to access to justice – have reached a level of regional customary law through adoption of various legal instruments, agreements, and initiatives. He suggests that these regional and national developments have the potential to influence legal developments outside Europe and add weight to the argument for a substantive human right to the environment in international law.

Latin America has been particularly progressive in relation to the right to a healthy environment. An express right to an adequate environment has been provided in the constitutions of most states in the region, and it has found varied applications (see e.g. Hayward 2005, chapter 6). Latin American judges have generally shown some readiness to refer to a right to a healthy environment, and this would be to go with the grain of a sense of social and environmental justice that is quite widespread amongst people in the region. Much environmental litigation in Latin America (as in South Asia) has consisted of public interest actions formulated in human rights terms. The second article included here by **Shelton** finds that 'the Inter-American Commission on Human Rights and Court of Human Rights have articulated a broad range of state obligations to maintain the environment at a quality that

permits the enjoyment of other guaranteed rights.'

A significant number of African countries have a constitutional right to an adequate environment. This does not necessarily mean the right will always be effective, as the article by **Carl Bruch et al** points out, but it does mean that those states see it as being in their interest to have them. Given that these states tend to be poor, this suggests that environmental protection is not conceived as a luxury but as an integral part of their most pressing concerns. The countries of sub-Saharan Africa depend more on their natural resource base for economic and social needs than any other region in the world, and yet the environmental resource base of the region is shrinking rapidly. Moreover, while parts of Africa have weak states and are plagued by a wide range of conflicts, these are frequently a result of environmental stress and scarcity. In most African countries there is struggle against socioeconomic and environmental problems on all fronts, and it is appropriate to see these as interrelated struggles rather than separate ones that involve trade-offs at the level of basic principle. Support for environmental rights is seen as important as for socioeconomic development more generally.

China does not attach the same significance to the human rights discourse as it has in the West, so the question of human rights and the environment in the Chinese context has different regional colourings. Notwithstanding these differences, **Richard Balme** shows the development of environmental law in China to have been based on a formal definition and recognition of environmental rights, much in line with their conceptualisation elsewhere:

'Chinese legislation has been revised and developed to incorporate principles of environmental impact assessment, information disclosure, polluter-pays, and ecological compensation. Chinese citizens, increasingly affected by environmental risks, have been prompt to use environmental conflicts, as well as legal and regulatory innovations, to develop new patterns of collective action and to participate more formally in decision-making. The environmental movement has become a driving force in raising environmental public awareness, in channeling relations between public authorities and citizens besides the traditional CCP venues, and occasionally in supporting social mobilisations able to challenge and to reverse public decisions.'

Around the world, then, there seems to be a general movement towards increased recognition of a human rights case for enhanced environmental protection. Whether this development is keeping pace with the threats it has to counter, though, is another matter. While the world as a whole still struggles to implement environmental protections to the degree required for human flourishing, or even, ultimately, survival, effects of environmental change are already becoming apparent at the planetary level. In just the few decades since the question of environmental change became internationally acknowledged as a potential human

rights concern, the effects of climate change, in particular, have become a real and present threat to some peoples in the world. As sea levels rise, certain countries literally face obliteration from the face of the planet. Watching the international community fail to take the decisive steps necessary to ensure that rising sea levels do not destroy them, populations of the Maldives and other small island states recognize that it may soon become necessary to evacuate their disappearing homelands. Other, larger, populations may then have to follow suit if the melting of polar ice continues due to the global warming precipitated by our carbon emissions. With these thoughts uppermost in mind, John H. Knox examines the 2009 Report of the Office of the U.N. High Commissioner for Human Rights,[4] as it became the first international human rights body to examine the relationship between climate change and human rights. This is a sufficiently important new agenda that the next part is devoted entirely to the burgeoning scholarly literature to it that has appeared in recent years.

Human Rights and Climate Change

Of all the major environmental concerns brought to public awareness in recent times, none has so far attained such prominence as climate change. Whether or not climate change is a uniquely serious problem compared to the others, it is certainly a grave challenge. It has attracted considerable dedicated attention, and some of the terms of debate about this matter can in fact be applied to wider questions of environmental concern.

In discussions of whether climate change can be regarded as a human rights issue, two prominent lines of argument can be distinguished: one centres on the planet's carbon absorption capacity as a necessary good that humans have a right to share; the other focuses on how harms to the planet's capacities can undermine goods that humans have a right to protection of.

The first line of argument has roots in ideas of human rights as including claims on the earth's natural resources that all humans must be recognized as having; for unless humans allow each other to utilize the earth's resources, they cannot produce and consume the things they need to survive, let alone develop more advanced infrastructure of civilization. So given that humans need energy as well as materials for those purposes, the source of usable energy should be accounted a part of that common bounty that all have a right to share in. But if all are to enjoy this right, then none should be allowed to monopolise the access or take an inequitably large share. In the early influential paper on climate ethics reproduced here by **Henry Shue**, attention is drawn to the need for a dual practical strategy to deal with two

[4] OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights,* U.N. Doc. A/HRC/ 10/61 (Jan. 15, 2009) [hereinafter *OHCHR Report].*

complementary challenges: the economic development of poor nations must depend on as little an amount of greenhouse gas emissions as possible while the nations already benefiting from carbon-fueled development must reduce emissions by more than the amount added by the poor nations. Shue accordingly depicted a clear moral distinction between what he termed 'luxury' emissions and 'subsistence' emissions: the latter could be justified on human rights grounds as needs, but the former, as mere wants, morally speaking, cannot. On this basis he proposed that such emissions as may be necessary for subsistence should be considered the object of an inalienable human right.

While endorsing Shue's analysis and sharing his moral perspective, my own paper that follows (**Hayward 2007**) suggests a somewhat amended framing of the challenge. For a risk in focusing on the distribution of rights is that we lose sight of responsibilities for reducing emissions and may even tend to encourage claims of a self-interested character, the competition between which has an inherently expansionary logic. So while the subsistence needs of poor should certainly be protected as human rights, this does not mean carbon emissions should be the object of a human right. A decent human life does not inherently depend on them; and human rights have also to be protected against the harms emissions cause. For this reason, **Simon Caney** argues, in the first of two papers included, that what matters is that there is a fair distribution of energy use (and its burdens) rather than of greenhouse gas emissions. More generally, distributive justice requires the fair distribution of a combined set of goods, meaning the distribution of emissions rights can be fair if it is part of fair package of goods. He also thinks that 'distributive justice can be served by selling emission rights and distributing their revenues to individuals'. My own suggestion is that rather than rely on market valuations as proxies for the combined goods for whose distribution we seek just principles, we might take a materially more practical view of what people actually need. So if rights of subsistence and responsibilities for emissions reductions both need to be comprehended within a single framework of justice, as Caney also argues, I propose that this framework must not only encompass overtly designated climate change issues but must also embrace a more comprehensive view of how the command of all natural resources and environmental goods is relevant to economic and welfare goods. My proposal is that the requisite comprehensive conception of the biophysical means of life should be developed in terms of the idea of 'ecological space.'[5]

The second line of argument, that in supporting the use of human rights to protect against climate harms, is the focus of **Derek Bell**'s paper, developing a specification and defence of the claim that anthropogenic climate change violates human rights. This

[5] For more on this idea see Hayward 2016.

philosophical analysis is complemented by a second paper from **Shue** – written at a distance of twenty years from the other – where the concern has now moved very much to proposing institutional reforms that could make possible the implementation of the principles discussed. The sense of urgency is powerful in this paper. That sense, and an understanding of humanity's brief window of opportunity to take momentous steps either towards or away from dramatic transformations of the planetary climate, animates the work of **Stephen Gardiner**. In the paper of his reproduced here he argues that human rights can play a role in addressing the challenge to existing institutions and theories, but that current human rights paradigms are not directed to the central characteristics of the profound challenge. A reorientation is needed for the evolving project of political philosophy on a global, intergenerational and ecological scale. He thus sounds a cautionary note about placing too much reliance on our ideas of human rights. Gardiner is concerned that the very considerable scope there is for debate within human rights – about who has a right exactly to what, against whom and in virtue of what – can distract attention from real problems and dilute a sense of purpose in dealing with them. The thrust of his paper is to suggest that we might take a more determined problem-oriented approach.

Another critical perspective is provided in the paper by **Lena Bendlin**, She notes that climate justice is often conceptualized as an issue of North–South relations and intergenerational fairness to be resolved by international intergovernmental negotiations, with most authors referring to states as the entities among which justice is to be achieved. Intra-societal justice is thereby accorded a subordinate role, with national and subnational policies receiving less scholarly attention. This means intra-societal distributive effects induced by climate policies are less well understood. This relative neglect, she suggests, mirrors the priorities prevailing within international negotiations, which have used stereotyping argumentation to introduce women on to the political agenda. A women's human rights perspective on climate justice would allow fuller consideration to mitigation impacts on women and the conditions for women's equal participation in all fields of climate governance. She commends a gender-sensitive analysis of distributive effects in mitigation to inform the development, design and implementation of future climate policy.

Protecting the future

The selection of papers orientated towards the future opens with a classic agenda-setting piece by **Edith Brown Weiss.** This offers a concise statement of how three basic principles of intergenerational equity form the basis of a set of planetary rights and obligations that are held by each generation. The rights and obligations are mutually supportive and derive from

each generation's position as part of the intertemporal entity of human society. **Richard P. Hiskes** reflects on how those intertemporal relationships can persist notwithstanding the various cultural differences among different societies; and **Kristian Ekeli** explores the potential for, and democratic legitimacy of, constitutional provisions intended to protect the interests of future people.

While the principles of intergenerational equity may be well-supported by philosophical argument and informed democratic opinion, their implications for present policy and action remains a matter on which much scope for debate remains. One general question that invariably arises when considering what present actions to take with future effects in mind is whether to devote resources now to projects with future benefits, or whether instead to use resources presently to develop capacities that will enable future generations more effectively to create their own solutions. As a quintessentially *economic* problem of matching scarce resources to alternative ends, such debates are often framed as a matter of *discount* rates: to what extent should future costs and benefits be discounted in value compared to present costs and benefits. There are different sorts of rationale for discounting, as set out in the second paper by **Caney** included, but none of those considered, he argues, supports allowing a human right to a healthy environment to be subject to discounting at all. So there is arguably a moral case, endorsed by a case for democracy, and holding independently of values internal to systems of economic accounting for costs and benefits, in support of recognizing present obligations regarding future environmental rights. For such recognition to translate into effective action, a pre-requisite, argues **Boyle**, in the second of his contributions, is the development of human rights law in global terms, whereby the global environment and climate are treated as the common concern of humanity.

Apart from practical problems of getting policy action on what in principle can be argued is necessary, there are also, as the article by **Johan Brännmark** points out, certain conceptual issues that make these obligations problematic. Concerns about environmental change are premised on the idea that there is something wrong in allowing the environment to deteriorate for future generations of humans. Yet when we think more closely what this might mean we encounter certain conundrums. One much discussed in the climate change literature is the notorious 'non-identity problem' formulated by Derek Parfit (1986). The puzzle is that if an act is wrong, this is because it harms future persons, or makes things worse for them than otherwise they'd have been; but a person's identity depends on the time at which he or she is conceived; and different patterns of behaviour in this generation will result in different individuals being born into future generations; therefore we cannot be said to have harmed, or made worse off, any future person through climate change damage by a policy without which they would not have existed at all. While some philosophers attempt to finds

ways of dealing with this conundrum, others doubt that it really captures what we need to be concerned about, particularly if a less individualistic framing of the problem is adopted. Yet the broader point remains that some indeterminacy is always likely to affect our thinking about the ethical claims on us of future generations. For instance, if we think about assigning rights to future generations, and non-individualistically, we face the difficulty that it is not straightforward to speak of groups having rights even in the present, and it is problematic to speak of rights of beings who do not even exist yet. Brännmark nevertheless suggests that the problem might be surmounted by moving from considering individual rights to generational rights, rights which future generations hold qua generations.'

On particular environmental human rights issues

When speaking about human rights in relation to the environment, or in a general way about environmental rights, we necessarily have in mind a wide range of interrelated issues. It would not necessarily be appropriate to think these rights could be listed in a uniquely complete and accurate inventory. Moreover, what exact obligations there need to be to fulfil which aspect of the general human right to an adequate environment is a matter involving many distinct considerations. Some of these lie towards the outer limit of established human rights framings, but I think it is helpful to have a sense of how the boundary is fluid and possibly expanding. Certainly, it is possible to give indications of particularly important or urgent issues; and priorities for action can be informed by human rights considerations. Hence while the issues highlighted for consideration in Part 4 can be approached from a variety of perspectives, these include perspectives of both human rights and environmental concern.

High on the list of priorities, from many points of view, is clean water. This is a basic necessity whose lack can become critical for humans in a very short time, and whose supply is limited globally within one of the planetary boundaries that human agency is threatening to transgress. Not only is the amount and quality of freshwater available in aggregate under such pressure from a range of threats (Vörösmarty et al, 2010) that it can be considered one of the 'planetary boundaries' humanity is now at risk of transgressing (Rockström et al 2009); the paper by **Peter H. Gleick** points out that the distribution of rights of access to the available water are so unequally distributed that many people's capacities to meet their basic needs are already compromised. Gleick argues that 'By acknowledging a human right to water and expressing the willingness to meet this right for those currently deprived of it, the water community would have a useful tool for addressing one of the most fundamental failures of 20th century development.' Issues concerning water intersect with many human rights challenges, and illustrative of some of these is the minerals industry.

Thus in the context of emerging debates about the status of access to water as a distinct human right and the mining industry's engagement with human rights discourses, **Deanna Kemp et al** highlight points of disconnection between technical, scientific and engineering-based approaches to water management on the one hand and human rights perspectives on the other. They argue that greater understanding of the connections will increase the likelihood that mining companies will respect human rights, avoid or mitigate adverse social and environmental risks that occur through their interaction with water and collaboratively identify water-related development opportunities. Meanwhile, a cautionary perspective is provided in the contribution by **Karen Bakker** which aims to elucidate the limitations of the human right to water as a conceptual counterpoint to privatization, and as part of an activist strategy.

In fact, while a great deal of the matters discussed in these volume relate to an alignment of environmental and human rights interests, these interests can also sometimes come apart. A notable concern, for instance, is how the aims of conservation can sometimes conflict with the interests of people who depend on the land or resources at issue. The short piece by **Dan Brockington et al** gives a concise overview of tensions that can arise between conservation, human rights, and development needs. Nevertheless, the displacement of people from the land frequently involves a combination of environmental and human rights harms. **Richard Black et al**, in fact, argue that to understand the effect of environmental change on human migration one needs to consider this in conjunction with economic, social, political and demographic drivers too. This analysis, they believe, provides a sound basis to discuss the human rights dimensions of migration – both the rights of people to reside free from the harms that necessitate migration and the rights of migrants. A further perspective on migration precipitated by rising sea levels is offered by **Farbotko and Lazrus**: how the populations of small island states experience the need to relocate is captured from their own perspective. Rather than be categorized as 'future climate refugees', there are claims of cultural identity and respect to consider. **Julie Koppel Maldonado et al** present case studies from Coastal Alaska and Louisiana that show, similarly, how tribal communities have a long history of adapting to environmental changes that should be recognized and protected. It is quite possible, they suggest, that traditional tribal methods for adaptation could be used as a basis for informing and enacting future policies as we face increasing challenges from global environmental change.

Struggles for human rights of the poor, the displaced and dispossessed are at the centre of concern for the article by **Anguelovski and Alier** that updates key points of the seminal book by Juan Martinez-Alier, *Environmentalism of the Poor* (2002). That work distinguished three types of environmentalisms around the world: the kind dedicated to

preservation or restoration of pristine nature, the kind committed to eco-modernisation, and the 'environmentalism of the poor' that takes a material interest in the environment as a source and a requirement for livelihood on behalf of today's historically marginalized residents. A major factor in displacement and dispossession today is the large-scale land acquisitions – also known as *land grabs* – that involve buying up of substantial tracts for commercial exploitation of globally-valued commodities at the expense of those hitherto living on the land for their livelihoods. Prominent among the issues arising is the restructuring of food production and accessibility. **Olivier De Schutter**, as United Nations Special Rapporteur on the Right to Food, discusses how international human rights law could provide guidance to ensure that the investment agreements that permit land acquisitions and leases contribute to the realization of the human right to adequate food. He proposes a set of core principles and measures for host States and investors. **Edward H. Allison et al** explore closely related issues as they apply to fisheries. They suggest that insecurity among fishers living in poverty can be most effectively addressed by social and political development that invokes the existing legal framework supporting the Universal Declaration of Human Rights. Understanding the challenge of equitable governance for fisheries from a broader human rights perspective enhances the chances of achieving both human development and resource sustainability for poor fishing communities. The challenge for food security as a whole is, as **Alison Misselhorn et al** point out, multi-scalar and cross-sector in nature. Their paper reviews current thinking about how to address these complex interrelated challenges.

If feeding a burgeoning global population is likely to become an ever-greater challenge, it is logical to ask whether any steps can be taken keep population growth within limits. Yet, as **Philip Cafaro** notes, population policy has attracted relatively little attention from ethicists, policy analysts, or policy makers dealing with this issue – perhaps because addressing it can quickly lead into contentious areas. He explores some of the ethical issues at stake, considering arguments for and against noncoercive population control and asking whether coercive population policies are ever morally justified.

If the population is not considerably reduced, and if the socio-economic drivers of climate change persist as they are, then we can envisage imminent scenarios in which the protection of human rights might conceivably only be possible by effecting the kinds of solution referred to as geoengineering. These would be attempts to redraw planetary boundaries by artificial means. Serious discussion of geoengineering is in its infancy, and so it would be premature to speculate in detail how it might affect human rights, but, as the article in this volume by **Gardiner** emphasizes, it is important how the issue is framed. He is particularly concerned that early policy work has often described geoengineering as a global public good. He challenges that classification, both on grounds of descriptive accuracy and,

more importantly, because it is seriously misleading, not least because it arbitrarily marginalizes ethical concerns. He suggests there is legitimate concern that rather than a seemingly benign supply of a universal benefit, what is at issue looks more like the exertion of monopoly power. Given that it relates to the basic ecological circumstances of our planet, and affects the life prospects of everyone, geoengineering raises fundamental concerns relating to human rights and the environment.

If corporate strategies can be misleadingly described as public goods, sometimes public goods can be misleadingly framed as private goods. Nowhere is this more striking than in the privatization of healthcare. The most basic relationship of human beings to their environment is that of the constant somatic interactions of our bodies with our immediate surroundings. Nor should we lose sight of how our bodies function in part *as* environments for various biotic contributors to our physical wellbeing. The state of our health is a particularly telling indicator of whether our human rights are aligned with our basic environmental interests. Thus while corporate interests may drive ever bigger scale, ever more artificial, interventions in the ecological order, human interests more directly lie in adjusting well to our immediate material environment, in its locality and particularity. The drivers of big engineering are the compulsion to accumulate wealth as indexed by monetary sums; the drivers of health are more directly physical and require accumulation of social skills and cooperation. Thus the inclusion of the article by **Spiegel and Yassi** is intended to illustrate how, by investing in 'human capital' rather than amassing monetized capital, a human right to health can be achieved in circumstances of relative financial poverty. This includes caring for environmental conditions as a direct part of the strategic means, rather than relying on environmentally disruptive medical industries. With its remarkable achievements in the fields of health, education and basic welfare, Cuba could be said to exemplify key facets of human security. In a world where corporate and financial interests tend to dictate what is more widely and influentially said, however, different messages abound. Those interests, unfortunately, are rather closely aligned with militaristic drives and corporate drives that put profits before either people or planet.

The very word 'security' has come to be synonymous with state capacities to meet potential threats with violent force. While some scholars and activists attempt to reclaim an idea of '*human* security' as embracing the secure enjoyment of full social and environmental conditions of welfare, there are real questions about how the effects of environmental and climate change may include greater risks of violent conflict. The paper by **Barnett and Adger** included reviews the evidence in this field and shows that there are many complex considerations that would need to be taken into account. This research agenda is clearly important for understanding how best to protect human rights in the 21st century.

A vital aspect of human security in mid-twentieth century, as perceived by newly independent former-colonies, was a sovereign right to control the natural resources of their territories. These states shared a concern that direct plunder experienced in former times might simply be replaced by smarter forms of exploitation by sophisticated foreign governments and businesses. International agreement was secured for the principle of a nation's permanent sovereignty over its natural resources. One of the effects of awareness of global interconnectedness in matters of human rights and the environment is to prompt questions about whether there should not be more cosmopolitan ownership of territorial resources. The contribution by **Chris Armstrong** makes the case that there should, for the various rights constitutive of sovereignty can be disaggregated and some can legitimately be shared on a more global basis. Rights that relate particularly to natural resources and ecological functionings, though, do so in virtue of the social and technological arrangements of particular peoples around the world. Once we start thinking about rearranging the entire landscape of rights relating to the environment, a new normative agenda opens up. The final paper in these volumes by **Avery Kolers** is included because, in bringing together many of the themes now the matter of live discussion, it points to an open and developing agenda of research and practice in this field.

This is what I would most emphasize, in commending these volumes to prospective readers: the interconnections between human rights and environmental concerns are not only many, various and complex, but they are also in a constant process of development. So while four volumes can offer considerable food for thought, they can only provide a sample of the thought so far directed to the questions, and in awareness that much more thinking has yet to be done. In this sense, the collection is intended to provide a firmly grounded springboard for future work.

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